IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.3999 OF 2002

Shri Dharma Kondiba Thorat
r/o. Pune, Dist. Pune ... Petitioner

V/s.

The Government of Maharashtra
through the Secretary of Social
& Welfar Department,
Mantralaya, Mumbai - 32 ... Respondent

Mr.S.D. Thokade for Petitioner
Mr.S.K. Chinchalikar, AGP, for Respondent-State

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **JANUARY 13, 2005**

ORAL JUDGMENT (PER MHATRE, J.):

. The Petition challenges the order of the Maharashtra Administrative Tribunal dismissing the Original Application filed by the Petitioner.

2. The Petitioner was employed as a Senior Clerk in the Office of the Divisional Officer, Social Welfare Department, Pune. He was also holding the charge of Cashier for a short duration between 27.6.1986 to 12.8.1986. The Petitioner was issued a chargesheet dated 14.6.1988 for following acts of misconduct:

a) The Demand Draft obtained from the State Bank of India but not transmitted to the

Educational Institutions;

b) Suppression of factual aspects from the drawer and disbursing officer and causing loss of Rs.75,02,025=50 Ps. to the Government;

c) Deliberately suppressing papers relating to demand drafts;

d) Assisting to destroy cheque dated 28-7-1986 of Rs.1,06,941/-

3. The Petitioner was also required to face a criminal trial for offences punishable under the Indian Penal Code as well as the Prevention of Corruption Act. A departmental enquiry was conducted against the Petitioner in respect of aforementioned charges. The report submitted by the Enquiry Officer was accepted by the Respondent and the Petitioner was dismissed from service on 17.9.1997. Departmental appeals preferred by the Petitioner against his dismissal from service were dismissed. The Petitioner, therefore, filed Original Application No.1 of 2001 before the Maharashtra Administrative Tribunal. Applications were also filed by other employees who were similarly charged and dismissed alongwith the Petitioner. By a common judgment, the Maharashtra Administrative Tribunal decided the three Original Applications by dismissing the Petitioner’s application and partly allowing the other two applications. The two other employees who were similarly charged and dismissed were reinstated by the Tribunal with continuity of service and 50% of the

backwages payable to them.

4. The main grievance of the Petitioner is that he has been discriminated against although the facts and circumstances in all the three applications were the same. It was argued on behalf of the Petitioner that the criminal case filed against him had been disposed of as there was no evidence whatsoever to prove the allegations misconduct against the Petitioner. It was pointed out to us that the Enquiry Officer had observed that two cheques which were drawn in the name of two bakeries had been handed over by the Petitioner to his successor who was the applicant in Original Application No.170 of 2000. The cheques were then found to be in the custody of one Mr.Raje, another employee. It is submitted before us that this fact itself would indicate that the Petitioner was not responsible for any misconduct.

5. We have examined the order of the Tribunal with the assistance of the advocate for Petitioner. The Tribunal has given no reasons as to why the Petitioner was treated differently from the other two employees who were similarly charged. There is no evidence on record to demonstrate that the Petitioner was responsible for the misconducts alleged against him. Although there was

no charge of misappropriation levelled against the Petitioner, the Tribunal has decided whether the Petitioner was responsible for any misappropriation. While doing so, the Tribunal has held that there is in fact no misappropriation of the amount of the three cheques but there was an attempt to misappropriate the amount. This charge was never levelled against the Petitioner. Therefore, the finding of the Tribunal that the Petitioner was guilty of an attempt to misappropriate any amount is erroneous. An employee cannot be expected to answer a charge which is not framed against him and, therefore, the Tribunal could not have traversed beyond the charges contained in the chargesheet issued to the Petitioner.

6. The Tribunal has held that the charge that the Petitioner had obtained demand drafts and had not transmitted them to the educational institutions had been proved. The other charge of the Petitioner having destroyed a cheque dated 28.7.1986 of Rs.1,06,941/- was partly proved while the rest of the charges were not proved. In our opinion, these allegations have not been proved against the Petitioner, moreso, when the Petitioner had handed over the cheques to the applicant in Original Application No.170 of 2000.

7. In the circumstances, the decision of the

Tribunal qua the Petitioner is quashed and set aside. We are of the view that the Petitioner should be similarly treated as other employees in Original Application Nos.170 of 2000 and 3 of 2001. The Petitioner is, therefore, entitled to reinstatement in service with continuity and 50% backwages.

8. Writ Petition is, accordingly, allowed. No costs.